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3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 KATHI L. HIGH,

8 Plaintiff,

9 v.

10 MICHAEL J. ASTRUE, Commissioner of
11 Social Security,

12 Defendant.

CASE NO. C10-5854BHS

ORDER

13
14 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 21), Plaintiff Kathi L. High’s (“High”) objections to the R&R (Dkt. 22), and Defendant Michael J. Astrue, Commissioner of Social Security’s (“Commissioner”) response (Dkt. 23).

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18 **I. PROCEDURAL HISTORY**

19 On November 29, 2010, High filed a complaint requesting judicial review of an administrative law judge’s (“ALJ”) decision that she was not disabled. Dkt. 3. On December 14, 2011, Judge Creatura issued the R&R recommending that the Court affirm the ALJ’s decision that High is not disabled. Dkt. 21. On December 28, 2011, High filed

1 objections to the R&R. Dkt. 22. On January 9, 20, the Commissioner responded. Dkt.
2 23.

3 **II. DISCUSSION**

4 A district judge “shall make a de novo determination of those portions of the
5 report or specified proposed findings or recommendations to which objection is made”
6 and “may accept, reject, or modify, in whole or in part, the findings or recommendations
7 made by the magistrate judge.” 28 U.S.C. § 636 (b)(1)(B). In this case, High objects to
8 three main portions of the R&R, which are addressed below.

9 **A. Evaluation of the Medical Evidence**

10 High argues that the ALJ erred in evaluating the medical evidence by not
11 providing specific and legitimate reasons for the extent to which he relied on the opinions
12 of multiple treating and examining physicians. Dkt. 22 at 1-10. Judge Creatura found
13 that the ALJ considered conflicting evidence from the treating and examining physicians
14 and was well within his authority to rely on some and not others to varying degrees. Dkt.
15 21 at 10-28.

16 **1. Dr. Sui**

17 Judge Creatura found that the ALJ had at least two valid reasons for rejecting the
18 opinion of Dr. Sui, High’s treating physician. However, even if the Court accepts High’s
19 argument that the reason regarding the degree of impairments is invalid because the ALJ
20 did not explicitly reply upon it, the Court concludes that the ALJ still had a valid reason
21 for rejecting Sui’s opinion. In his decision, the ALJ states that he is giving little weight
22 to Dr. Sui’s opinions regarding High’s psychological conditions because “she is relying

1 on the claimant's subjective statements only, and her opinion is not based upon any
2 objective testing.” Dkt. 21 (citing TR 19). As discussed in the R&R (Dkt. 21 at 18-21),
3 the lack of objective testing and the inference, based on Dr. Sui's records, that she relied
4 heavily on High's subjective statements, are valid considerations for the ALJ to make
5 when determining the weight to be given a medical opinion. *See Morgan v. Coom'r of*
6 *Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (stating that “[a] physician's opinion
7 of disability premised to a large extent upon the claimant's own accounts of his symptoms
8 and limitations may be disregarded where those complaints have been properly
9 discounted (internal quotation marks omitted)). High fails to show error in either the
10 ALJ's decision, or Judge Creatura's opinion, discussing these valid reasons for rejecting
11 Dr. Sui's opinion. The ALJ provided specific and legitimate reasons supported by
12 substantial evidence in the record to discount Dr. Sui's opinions based on her reliance on
13 High's subjective account of her symptoms and Dr. Sui's lack of objective testing.
14 Accordingly, the Court adopts the R&R on this issue.

15 **2. Dr. Moore**

16 Judge Creatura found that while High's testimony did not fully support Dr.
17 Moore's opinion and that some contradictions exist between the opinion of Dr. Moore
18 and some of the other medical evidence supplied by doctors in this case, there is much
19 objective evidence to support Dr. Moore's medical opinions. Dkt. 21 at 15. In the R&R,
20 Judge Creatura discusses specific examples of objective evidence that supports Dr.
21 Moore's opinion. *Id.* at 7-9, 15-17. High fails to show that the ALJ improperly
22 concluded that more weight should be given to Dr. Moore's opinion as opposed to other

1 evidence presented. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998)).

2 Therefore, the Court adopts the R&R on this issue.

3 **3. Dr. Smith and Dr. Michels**

4 Judge Creatura found that the ALJ properly assessed the medical opinions of Dr.
5 Smith and Dr. Michels and appropriately supported his finding that Dr. Moore’s opinion
6 regarding High’s mental residual functional capacity should be given greater weight than
7 that of Dr. Smith and Dr. Michels. *See* Dkt. 21 at 21-26. As Judge Creatura states in the
8 R&R, “the ALJ is responsible for resolving ambiguities and conflicts in the medical
9 evidence.” *Id.* at 23, 26 (citing *Reddick*, 157 F.3d at 722). Indeed, “[i]t is not the job of
10 the court to reweigh the evidence: If ‘the evidence is susceptible to more than one
11 rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion
12 must be upheld.’” Dkt. 21 at 23, 26 (citing *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th
13 Cir. 2002)). High has failed to show how Judge Creatura erred in finding that the ALJ’s
14 conclusion must be upheld. Accordingly, the Court concludes that the ALJ’s assessment
15 of Dr. Smith’s and Dr. Michel’s opinions were proper and that the ALJ’s residual
16 function capacity assessment is not invalid due to any failure by the ALJ to include all of
17 the functional limitations assessed by Dr. Smith or Dr. Michels. Therefore, the Court
18 adopts the R&R on these issues.

19 **4. Dr. Clifford**

20 Judge Creatura found that, although the ALJ stated that he gave substantial weight
21 to Dr. Clifford’s opinion, to the extent he “rejected any functional limitations opined by
22 Dr. Clifford, the ALJ sufficiently referenced specific evidence in the medical record to

1 reject such functional limitations.” Dkt. 21 at 28. In her objections, High argues that the
2 ALJ erred in his evaluation of Dr. Clifford because such evaluation was internally
3 inconsistent. Dkt. 22 at 9-10. Specifically, High argues that the ALJ erred in giving Dr.
4 Clifford’s opinion substantial weight but rejecting the functional limitations given by Dr.
5 Clifford without explanation. *Id.* The Court concludes that Judge Creatura correctly
6 found that the ALJ gave sufficient specific and legitimate reasons for not crediting fully
7 Dr. Clifford’s opinion to the extent that he didn’t include all functional limitations
8 contained in his opinion. *See* Dkt. 21 at 27-28. As Judge Creatura found, the ALJ
9 accomplished this by setting out a detailed and thorough summary of the facts and
10 conflicting clinical evidence, stating his interpretation thereof, and making findings. *See*
11 *id.* Therefore, the Court adopts the R&R on this issue.

12 **B. Evaluation of High’s Testimony**

13 Judge Creatura found that the ALJ did not err in his evaluation of High’s
14 testimony. High argues that even if this was a proper finding, Judge Creatura erred in not
15 addressing High’s argument that the ALJ’s analysis of her testimony was tainted by his
16 failure to properly evaluate and fully credit the medical opinion evidence of Dr. Sui, Dr.
17 Smith, Dr. Michels, and Dr. Clifford. For the reasons discussed above, the Court
18 concludes that Judge Creatura properly found that the ALJ did not err in evaluating the
19 medical evidence. Accordingly, the ALJ did not err in evaluating High’s testimony based
20 on his evaluation of the medical evidence. Therefore, the Court adopts the R&R on this
21 issue.
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1 **C. Lay Witness Testimony**

2 High argues that the ALJ failed to properly evaluate the testimony of Bobby High,
3 High's mother, regarding Bobby High's observations of High's symptoms and
4 limitations. Dkt. 22 at 11. High's objections are almost identical to her opening brief.
5 Compare *id.* with Dkt. 16 at 14-15. Judge Creatura cited specific reasons the ALJ stated
6 for discounting Bobby High's testimony and, ultimately, disagreed with High. Dkt. 21 at
7 29-30. The Court has reviewed the record and also disagrees with High. Therefore, the
8 Court adopts the R&R on this issue.

9 **D. Residual Functional Capacity and the ALJ's Step Four Finding**

10 High argues that the ALJ erred by improperly determining her residual functional
11 capacity and by finding, in step four of his analysis, that she could perform her past
12 relevant work. Dkt. 22 at 12. High's arguments are essentially that the ALJ erred at
13 these steps because the ALJ erred at the previous steps. The Court finds that, based on
14 the record and the Court's conclusion that the ALJ did not err in evaluating the medical
15 evidence, High's arguments and objections are without merit. Therefore, the Court
16 adopts the R&R on these issues.

17 Therefore, having considered the R&R, High's objections, and the remaining
18 record, the Court hereby finds and orders as follows:

- (1) The R&R (Dkt. 21) is **ADOPTED**;
- (2) The ALJ's decision is **AFFIRMED**; and
- (3) This action is **DISMISSED**.

Dated this 14th day of March, 2012.

A handwritten signature in black ink, appearing to read "Benjamin H. Settle", written over a horizontal line.

BENJAMIN H. SETTLE
United States District Judge